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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RONTEZ MILES

Plaintiff,

v.

THE NATIONAL FOOTBALL LEAGUE
and JOHN DOES 1-5

Defendants.

Civil Action No.: _____

NOTICE OF REMOVAL

Defendant National Football League (the “NFL”) hereby notices the removal of this civil action to the United States District Court for the District of New Jersey from the Superior Court of New Jersey, Law Division, Morris County, pursuant to 28 U.S.C. §§ 1441 and 1446. Removal is made pursuant to 28 U.S.C. §§ 1331, 1367 and 29 U.S.C. § 185 on the basis of federal question jurisdiction. The grounds for removal are stated as follows:

I. BACKGROUND

1. Pursuant to Local Rule 10.1(a), the NFL’s address is 345 Park Avenue, New York, New York, 10154. The current address of plaintiff Rontez Miles (“Plaintiff”) is unknown to the NFL at this time, but on information and belief, Plaintiff is currently residing in Morristown, New Jersey. Plaintiff’s counsel’s address is Lawrence N. Lavigne, Lawrence N. Lavigne, Esq., LLC, 2444 Morris Ave, Suite 206, Union, NJ 07083-5918.

2. On August 19, 2019, Plaintiff commenced a civil action against the NFL and five “John Doe” defendants in the Superior Court of New Jersey, Morris County, captioned *Rontez Miles v. The National Football League and John Does 1-5*, Docket No. MRS-L-001770-19.

3. On August 26, 2019, the Complaint, a Summons, a Civil Cover Sheet, and a Track Assignment Notice were served on the NFL. A copy of these documents are attached hereto as Exhibit 1. These are the only process, pleadings, or orders known by the NFL to have been served in this action. *See* 28 U.S.C. § 1446(a).

4. Plaintiff is a professional football player for the New York Jets, one of the member clubs of the National Football League (“NFL”). Compl. ¶¶ 1-3.

5. Plaintiff alleges that he suffers from a medical condition known as Alopecia Areata, which causes ocular photosensitivity and photophobia. Compl. ¶¶ 13-15. Plaintiff states that in order to reduce the effects of the ocular photosensitivity and photophobia, he requires the use of a protective shield in conjunction with his helmet and face guard. *Id.* ¶¶ 16-17. He alleges that he has used such a shield throughout his football career, with the Jets’ permission. *Id.* ¶¶ 17-18. Plaintiff alleges that before the start of the August 19, 2017 preseason game, an official employed by the NFL directed him to remove the shield or he would not be permitted to play in the game. *Id.* ¶¶ 19-21. Plaintiff claims that, in compliance with the official’s instruction, he removed the shield and proceeded to play in the game. *Id.* ¶ 17. As a result, Plaintiff claims that “due to the lack of protection from the bright sun, [he] did not see an opposing player approach, and, hence, was unable to take defensive maneuvers.” *Id.* ¶ 28. He states that “the opposing player made contact” with Plaintiff’s face, causing “severe and significant injury,” including a broken orbital bone of the right eye. *Id.* ¶¶ 29-30.

6. Plaintiff alleges that his medical condition constitutes a “disability” and that he sought a “reasonable accommodation” (the use of the protective shield) to enable him to “perform the requirements of his job.” *Id.* ¶¶ 24-25. By directing him to remove the shield, Plaintiff claims that the NFL “through its official denied Plaintiff a reasonable accommodation” in violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.* and the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1, *et seq.* Compl. ¶¶ 26, 44-48. Plaintiff’s complaint also asserts disability discrimination (*id.* ¶¶ 37-43) and negligence (*id.* ¶¶ 49-56) causes of action against the NFL.

7. Plaintiff, the Jets, and the NFL are all bound by a collective bargaining agreement (“CBA”) governing the terms and conditions of employment of NFL players. *Id.* ¶ 8. The CBA is negotiated between the NFL Players Association (“NFLPA”), the sole and exclusive collective bargaining representative of all NFL players (including Plaintiff), and the NFL Management Council (“NFLMC”), the sole and exclusive bargaining representative of all NFL member clubs. *Id.* ¶ 7; Attachment A to the Declaration of Lawrence P. Ferazani, Jr. (attached hereto as Exhibit 2). The CBA governs the relative rights and responsibilities of the NFL, the thirty-two NFL clubs, the NFLPA, and the players with respect to, among other things, player safety, player attire and equipment, and the remedies and benefits available to players in the event of an injury sustained during the course of an NFL game. *See* CBA Arts. 39, 45, 50, 51, 53, 55, 60, 61, 62, App A. ¶ 9.

8. This notice of removal is timely. It is being filed within 30 days after the receipt by the NFL through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which this action is based, as required by 28 U.S.C. § 1446(b). The thirtieth day after service of the Summons and Complaint is September 25, 2019.

II. GROUND FOR REMOVAL

9. A defendant may remove an action to federal court under 28 U.S.C. § 1441(a) if the plaintiff's complaint falls within the original jurisdiction of the federal courts, including where the complaint presents a federal question. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Ferraro v. Bell Atlantic Co., Inc.*, 955 F. Supp. 354, 356 (D.N.J. 1997); *see also* 28 U.S.C. § 1331.

10. Federal question jurisdiction exists in this case because (1) Plaintiff's complaint raises claims arising under a federal statute and (2) Plaintiff's claims are completely preempted by section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a).

A. Plaintiff's Complaint Alleges Claims Arising Under A Federal Statute

11. Count II alleges that the NFL violated the ADA. *See* Compl. ¶¶ 1, 38, 42-3, 47-8. By asserting claims under federal law, namely the ADA, Count II of Plaintiff's complaint plainly asserts a federal question under 28 U.S.C. § 1331.

12. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because "they form part of the same case or controversy under Article III of the United States Constitution." State law claims fall within this Court's supplemental jurisdiction when they share with the federal claims "a common nucleus of operative fact...such that [the plaintiff] would ordinarily be expected to try them all in one judicial proceeding." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966).

13. Here, Plaintiff's New Jersey LAD claims (Counts I and II) and negligence claim (Count III) arise out of the same set of operative facts as his ADA claim. Specifically, Plaintiff's federal and state claims all arise from his employment as a professional football player, alleged discrimination against Plaintiff because of his disability, alleged failure to provide a reasonable

accommodation, and alleged injury resulting from the defendants' conduct. *See* Compl. ¶¶ 1-36 ("Facts Common to All Counts"). Therefore, this Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. *See O'Leary v. Count of Salem*, No. 1:15-cv-03862-MLH-AMD, 2018 WL 1942517, at *1 n.1 (D.N.J. Apr. 25, 2018) (exercising supplemental jurisdiction over plaintiff's LAD claims where plaintiff also brought ADA claims based on the same set of facts).

14. Moreover, there is no reason for the Court to decline to exercise supplemental jurisdiction over Plaintiff's state law claims. Plaintiff's state law claims neither raise novel or complex issues of state law, nor predominate over the claims over which this Court has original jurisdiction, and there are no exceptional circumstances or other compelling reasons for this Court to decline supplemental jurisdiction. *See* 28 U.S.C. § 1367(c).

A. Plaintiff's Claims Are Completely Preempted by LMRA Section 301

15. Federal question jurisdiction also exists in this case because Plaintiff's state law claims are completely preempted by section 301 of the LMRA, 29 U.S.C. § 185(a). Any claim that either (1) arises under or (2) is substantially dependent on the interpretation of a collective bargaining agreement is preempted by the LMRA. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985); *Antol v. Esposto*, 100 F.3d 1111, 1117 (3d Cir. 1996).

16. Although Plaintiff's claims are styled as tort and discrimination claims, the "preemptive force" of the LMRA is so strong that any claim based on the preempted state law is considered a federal claim arising under federal law. *Caterpillar*, 482 U.S. at 393 ("Once an area of state law has been completely pre-empted, any claim based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law"). Congress enacted section 301 precisely because "[t]he possibility that individual contract terms

might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective bargaining agreements.” *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). Likewise, statutory discrimination claims may be preempted where their resolution requires CBA interpretation. *Rutledge v. Int’l Longshoremen’s Ass’n AFL-CIO*, 701 F. App’x 156, 162 (3d Cir. 2017) (noting, in context of the LAD, that “construction of a CBA term may prove necessary in some contexts to determine a plaintiff’s qualification for a particular position”); *see also Simoni v. Diamond*, No. 3:10-CV-6798 (PGS), 2017 WL 82470, at *5-6 (D.N.J. Jan. 9, 2017) (“on questions of promotion, seniority, and assignment to training programs courts have found preemption of state law discrimination in cases where the CBA specifically governed the litigated cases”).

17. Plaintiff’s complaint concerns an injury he allegedly suffered during the course of his employment while playing in an NFL game. Compl. ¶¶ 27-36. These claims are preempted by the LMRA and removable to federal court because they arise under, and are substantially dependent on, interpretation of the NFL-NFLPA CBA. Plaintiff’s claims cannot be resolved without interpretation of the CBA provisions addressing the extent of the NFL’s duty, if any, to provide an “accommodation” or “help [Plaintiff] avoid injury while playing football.”

III. REMOVAL IS PROCEDURALLY PROPER

18. Pursuant to 28 U.S.C. § 1446(a), removal to the United States District Court for the District of New Jersey is proper because it is the federal district court for the district embracing the place where the state court suit is pending.

19. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to Plaintiff, and a copy of the Notice of Removal will be filed with the

Clerk of the Superior Court of New Jersey, Law Division, Morris County, to effect the removal of this action.

WHEREFORE, the NFL respectfully requests that this action be removed from the Superior Court of New Jersey, Law Division, Morris County, to the United States District Court for the District of New Jersey.

Dated: September 25, 2019

Respectfully submitted,

McCARTER & ENGLISH, LLP

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By: /s/ Richard Hernandez

Richard Hernandez

Attorneys for Defendant National Football League

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I caused the foregoing Notice of Removal to be filed with the Clerk of the Court using the electronic case filing system and served on counsel for the plaintiff by U.S. Mail:

Lawrence N. Lavigne, Esq.
Lawrence N. Lavigne, Esq. LLC
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Union, New Jersey 07083

/s/ Richard Hernandez